

informalities noted by the Examiner. Specifically, new independent method claims 30 and 39 include the step of baking the dough; proper antecedent basis has been provided for all terms in the claims; and the full chemical name for datem has been provided in the specification. Regarding the Examiner's objection to the use of the term "intense" sweetener in the claims, the Applicant submits that the term "intense sweetener" is known to those skilled in the art. (For example, see column 4 of U.S. Patent No. 5,707,975.)

The enablement rejections raised by the Examiner in Item 4 of the Office Action have also been addressed in new claims 30-63. Specifically, new independent claims 30, 39, 48 and 56 all include the specific amounts of polydextrose, fiber and glycerol monostearate used in the claimed invention.

Upon review of the new claims, the Examiner will notice that new independent claims 30, 39, 48 and 56 have been submitted. Claim 30 includes the features of original claim 14 along with the weight percentages of polydextrose and glycerol monostearate. Claim 39 includes the features of original claims 20, 22 and 24. Claims 48 and 56 are product claims which recite features included in new claims 30 and 39 respectively.

Original independent claims 14 and 20 were rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 4,678,672 to Dartey et al. in view of U.S. Patent No. 5,340,598 to Hay Jr. et al. and "The Encyclopedia of Chemical Technology". It is submitted that new claims 30, 39, 48 and 56, which all

incorporate weight percentages into the features recited in original claims 14 and 20, are patentable over the teachings of these references.

The Dartey et al. patent was cited as disclosing a method of making a baked product which includes the step of combining flour, polydextrose, emulsifier, yeast and water to make a dough. The Examiner noted in the Office Action that the dough formulation in the Dartey et al. patent included 5-20% polydextrose. \* Even though the claimed level of polydextrose in the present invention, i.e., about 1 to about 5 percent by flour weight, is outside the level of polydextrose disclosed by the Dartey et al. patent (5-20%), the Examiner stated in Item 10 of the Action that the difference in the amount of ingredients used "is not deemed patentably significant in absence of showing of criticality or unexpected result because it would have been obvious for one to vary the amounts depending on the properties desired."

The Applicant's representative has reviewed the Examiner's reasoning used to support the rejection under 35 USC 103(a) and believes that the invention recited in the new claims is patentable over the teachings of the Dartey et al. and Hay Jr. et al. patents and "The Encyclopedia of Chemical Technology". Specifically, the Examiner's attention is directed to M.P.E.P. §2144.05 which provides guidance with respect to the obviousness of claimed ranges. It appears from the Office Action that it is the Examiner's position that the claimed range of polydextrose

in the present invention, i.e., 1-5%, could be achieved by routine experimentation in view of the disclosed range of 5-20% polydextrose in the dough disclosed in the Dartey et al. patent. However, the Applicant's representative directs the Examiner's attention to the second paragraph of M.P.E.P. §2144.05(b) wherein it is stated that only result-effective variables can be optimized and that a "particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation."

The Applicant's representative has carefully reviewed the Dartey et al. patent and submits that there is no teaching regarding the effects of polydextrose on the anti-staling properties of a baked product. Therefore, it is believed that the Dartey et al. patent does not teach or suggest that polydextrose is a "known" result-effective variable with respect to the anti-staling properties of a baked product. Consequently, the Applicant respectfully submits that under the guidance provided by M.P.E.P. §2144.05(b), the use of 1-5% polydextrose, as claimed in new independent claims 30, 39, 48 and 56, cannot be characterized as the result of routine experimentation. Accordingly, it is believed that the subject matter of new independent claims 30, 39, 48 and 56 is patentable over the combination of the Dartey and Hay patents and the "Encyclopedia of Chemical Technology".

In view of the foregoing amendments and arguments, it is believed that the application has been placed in condition for allowance. Favorable reconsideration is respectfully requested.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the U.S. Postal Service as 1st class mail in an envelope addressed to: Assistant Commissioner of Patents, Washington, D.C. 20231, on April 27, 1998.

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